

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated July 9, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-38 are pending in the Application. Claims 1, 36, and 38 are independent.

In the Final Office Action, claims 1-10, 13-15 and 17-37 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 3,725,658 to Stanley ("Stanley") in view of U.S. Patent No. 4,914,720 to Knodle ("Knodle"). Claims 11 and 12 are rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 4,849,172 to Yafuso ("Yafuso"). Claim 16 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 4,861,727 to Hauenstein ("Hauenstein"). Claim 38 is rejected under 35 U.S.C. §103(a) over Stanley in view of Knodle in further view of U.S. Patent No. 5,315,993 to Alcala ("Alcala").

These rejections are respectfully traversed. It is respectfully submitted that claims 1-38 are allowable over Stanley in view of Knodle alone and in any combination with Yafuso, Hauenstein, and Alcala for at least the following reasons.

Claims are amended above to clarify their recitations. For example, the recitation of claim 1 was simplified by indicating that the luminescable element is included in the respiratory flow component and by making an easy distinction between a first electromagnetic radiation emitted by the radiation source and a second electromagnetic radiation sensed by the detector. No new matter was added and no new search should be necessitated by the amendments to the claims.

Stanley is directed to continuously detecting oxygen in a gas stream. In one embodiment, shown in its FIG. 2, Stanley describes a tube 24 coated on its inside surface with a sensor film 25. Exciting radiation from a source 27 passes through the transparent portion of tube 24 causing the sensor film 25 to fluoresce; this fluorescence is then reflected back to a phototube 28.

At page 4, second paragraph of the Final Office Action, the Final Office Action admits that Stanley does not teach a transducer of an oxygen monitoring apparatus that is configured to be removably secured to a respiratory flow component. Knodle, col. 11, lines 34-45 is referenced concluding that this modification is obvious to one of ordinary skill in the art. However, Knodle teaches that infrared radiation emitter 36 be positioned opposite

the detector 42 in infrared radiation detector unit 38 (see, FIG. 3). This positioning is not analogous to the positioning of the source and detector in Stanley's FIG. 1. Accordingly, Knodle teaching is not analogous to the positioning of the source and detector in Stanley's FIG. 2 and, thus, Stanley and Knodle cannot be combined to reject the independent claims.

It is respectfully submitted that the apparatus of claim 1 is not anticipated or made obvious by the teachings of Stanley in view of Knodle. For example, Stanley in view of Knodle do not disclose or suggest, "the transducer adapted to be removably securable to a respiratory flow component" that amongst further patentable elements, comprises (illustrative emphasis added) "a detector positioned adjacent to the radiation source so as to be located on a same side of the respiratory flow component as the radiation source" as recited in claim 1, and as similarly recited in independent claims 36 and 38. Yafuso and Hauenstein are introduced for allegedly showing elements of the dependent claims and as such, do nothing to cure the deficiencies of Stanley in view of Knodle. Alcala is introduced to reject independent claim 38, but also fails to remedy the deficiency of Stanley in view of Knodle.

Based on the foregoing, the Applicants respectfully submit that independent claims 1, 36 and 38 are patentable over Stanley and Knodle and notice to this effect is earnestly solicited. Claims 2-35 and 37 respectively depend from one of claims 1 and 36 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims.

For example, claim 2 recites the transducer comprising a processor. A processor is a much more advanced device having capabilities unlike these of an amplifier or a recorder. While an amplifier can amplify and a recorder can record a signal the processor can process a signal in ways not possible for the amplifier and recorder of Stanley. Thus, claim 2 are allowable over Stanley in view of Knodle for this additional reason and an indication to that effect is respectfully requested.

Claim 11-12 are rejected over Stanley in view of Knodle in further view of Yafuso, however a comparison of FIG. 1 of Yafuso with the recitations of claims 11-12 reveals that in Yafuso, the detector is not "positioned adjacent to the radiation source so as to be located on a same side of the respiratory flow component as the radiation source" as in claim 1, and therefore does not teach,

disclose, or suggest "a reference detector positioned adjacent to the radiation source" as in claim 11. Further, claim 12 recites "dividing the second electromagnetic radiation" which is the reflection of the radiation emitted by the source, not the radiation emitted by the light source as taught by Yafuso. Thus, claims 11-12 are allowable over Stanley in view of Knodle in further view of Yafuso for this additional reason and an indication to that effect is respectfully requested.

In rejecting claims 20-23 the Final Office Action relies on filters 16 and 17 illustrated in Stanley's FIG. 1. However contrary to the suggestion contained in the Final Office Action, these filters of Stanley are not shown in FIG. 2 which is the figure referenced in rejecting the claims of the present application. In FIG. 1, Stanley shows filters 16 and 17 positioned facing source 20 and detector 21. There is no discussion or illustration of filters with reference to FIG. 2 of Stanley, or even a suggestion that filters may be used with the arrangement of FIG. 2. Thus, claims 20-23 are allowable over Stanley in view of Knodle for this additional reason and an indication to that effect is respectfully requested.

In rejecting claims 24-30 the Final Office Action references the paragraph of Stanley that bridges cols. 4 and 5. The paragraph states that "Room temperatures are preferably employed when operating the detector." And further that "[p]ressures and temperatures outside these preferred ranges may be employed provided" This does not teach, disclose, or suggest a transducer including "a temperature control component configured to maintain said luminescable composition at a substantially constant temperature." There is no disclosure in any of the prior art references provided in the Office Action of a temperature control component recited in claim 24 and similarly, there is no disclosure or suggestion of maintaining the "luminescable composition at a substantially constant temperature" as recited in claim 24. Thus, claims 24-30 are allowable over Stanley in view of Knodle for this additional reason and an indication to that effect is respectfully requested.

Finally, claims 31-34 describe the housing of the transducer that includes the center and two end sections. As argued above, the combination of Stanley in view of Knodle does not teach, disclose, or suggest "a detector positioned adjacent to the radiation source so as to be located on a same side of the

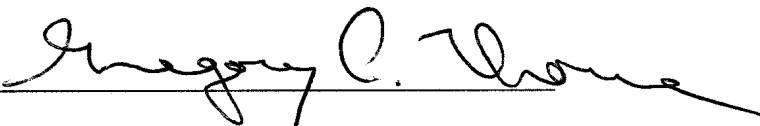
respiratory flow component" as recited in claim 1 and thus necessarily, because of the adjacent positioning, being located in one of the two end sections recited in claims 31-34. Thus, claims 31-34 are allowable over Stanley in view of Knodle for this additional reason and an indication to that effect is respectfully requested.

Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicants have made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

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